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## BOARD OF APPEALS

Hearing # 11-07

**DECISION ON PETITION FOR REVIEW OF A DECISION  
OF THE ZONING ENFORCEMENT OFFICER  
THAT PETITIONER IS CONDUCTING A SALVAGE YARD  
AND A NON-PERMITTED ACCESSORY USE BUSINESS  
AT 100 WILLOW STREET, MAP G1-86 AND G1-87**

The Acton Board of Appeals (the "Board") held a duly noticed public hearing on June 6, 2011, at 7:30 PM at the Acton Town Hall. The hearing was attended by Board Chairman Kenneth F. Kozik, Member Marilyn Peterson and Member Jon Wagner, Assistant Town Planner and Zoning Enforcement Officer (ZEO) Scott Mutch, and Board Secretary Cheryl Frazier. Attending for the Petitioner was owners Gary Hamel, Sr., and Jill Primer, along with their legal representative Attorney Louis N. Levine of D'Agostine, Levine, Parra & Netburn, P.C. Also present were numerous abutters.

### **The Zoning Bylaw**

The Town of Acton Zoning Bylaw (the "Bylaw") prohibits certain uses. More specifically:

3.7 Prohibited USES – All USES that pose a present or potential hazard to human health, safety, welfare, or the environment through the emission of smoke, particulate matter, noise or vibration, or through fire or explosive hazard, or glare are expressly prohibited in all zoning districts. In addition, the following USES are expressly prohibited in all zoning districts.

Aircraft assembly; landing or takeoff of motorized aircraft  
Amusement park Asphalt, block, or concrete plant Billboard  
Bottling plant  
Chemical storage and production facility

Commercial extraction of earth products such as sand, gravel, soil, loam, rock, ore, or minerals, except when connected with the construction of BUILDINGS, STREETS, ways or other improvements to land in accordance with applicable laws and regulations.  
Commercial or private dump, landfill, refuse incinerator, or other commercial or private solid waste disposal or processing facility  
Commercial or private sludge storage or disposal facility  
Drive-in or outdoor cinema  
Fertilizer plant  
Heating fuel sales, service and storage  
Manufacture, use, storage, transport or treatment, disposal and/or processing of explosive, toxic or hazardous materials as a principal activity  
Lumber Yard  
Mobile home; mobile home park; mobile home sales  
Meat packing and pet food plants, slaughterhouses Nuclear power generation Motor vehicle assembly  
Paper or pulp mill Privately owned cemetery Radioactive waste disposal or reprocessing of radioactive materials  
Refinery  
Repair facility for trucks, buses, construction and industrial equipment  
Reclamation and Reprocessing of asphalt and/or concrete  
Retail Store larger than 60,000 sq. ft.  
Sale of heavy vehicles, equipment or buses  
Salvage yard and all open air storage of salvage materials and debris  
Stadium, coliseum, sports arena, race track  
Storage or reprocessing of waste products and salvage materials such as non-operable vehicles or appliances  
Storage yard, contractor's yard or other open air establishment for storage, distribution, or sale of materials, merchandise, products or equipment  
Tanneries, smelting or rendering plants, gelatin factory  
Trailer camp  
Truck or trailer cleaning, washing facility or terminal  
Water resources development for private

The Bylaw permits certain accessory uses under Section 3.8. More specifically:

3.8 ACCESSORY USE Regulations – ACCESSORY USES shall be permitted in all districts on the same LOT with the PRINCIPAL USE. The ACCESSORY USES listed below are subject to the conditions and requirements stated in the respective Sections.

3.8.1 ACCESSORY USES Permitted in the Residential Districts and dwellings in the Non-Residential Districts:

3.8.1.2 A home occupation, other than retail sales, conducted entirely within the DWELLING UNIT or an accessory BUILDING by a resident and employing no persons other than the residents. In the Village Residential District, the portion of the DWELLING UNIT or accessory BUILDING used for a home occupation shall be limited to 500 square feet of NET FLOOR AREA. The Board of Appeals may authorize by special permit a home occupation which 1) conducts retail sales, or 2) employs non-residents provided that no more than two such non-resident employees shall be present on the premises at any one time.

An abutter to petitioners' property had listed a home for sale with a local real estate agent. The local real estate agent filed a written complaint with the Zoning Enforcement Officer (ZEO) alleging that the petitioners were storing equipment and materials on their property located at

100 Willow Street and conducting a business involving heavy equipment on the same property. The ZEO viewed the property and filed a report. The report was sent to the petitioners.

### **Petitioner's Appeal**

In a letter dated March 10, 2011, the ZEO reported to the petitioners that it was his determination the they were in violation of the Bylaws. More specifically, the ZEO stated the following:

- Petitioners were operating storage yard, contractor's yard or other open air establishment for storage, distribution, or sale of materials, merchandise, products or equipment, and/or a salvage yard and open air storage of salvage materials and debris, in violation of Section 3.7. Several photos taken by the ZEO showed, for example, the following items on petitioners' property: a Peterbuilt dump truck, a flat bed truck, a large tractor, compressed gas tanks, and various other debris and tarps scattered about the yard.
- Petitioners were operating a non-permitted accessory use in violation of Section 3.8. The ZEO determined that the presence/storage of a Peterbuilt dump truck, a flat bed truck and a large tractor were indicative of a business not considered a home occupation in a residential district.

Petitioners filed this timely appeal and ask the Board to overturn the decision of the ZEO. In summary, Petitioner makes the following arguments through their attorney Louis Levine.

#### **Regarding 3.7:**

Mr. Levine argued that the petitioners were not running a storage yard, contractor's yard or salvage yard, but that their yard was just a "bit more cluttered" than is typical of a property located within a residential district. Mr. Levine also indicated that the yard had been cleaned up between the time the petitioners received the letter in March from the ZEO and the present hearing, and therefore Mr. Levine thought this issue to be moot.

All parties present agreed that the bylaw does not specifically define what a storage yard, contractor's yard or salvage yard is.

Several abutters stated that they had no issues with the way the petitioners were keeping their yard.

#### **Regarding 3.8:**

Mr. Levine argued that the petitioners were operating a permitted home occupation under Section 3.8.1.2. After questioning from the Board, Mr. Levine articulated that the petitioners operate a transportation business involving the Peterbuilt dump truck, the flat bed truck and the large tractor. More specifically, the petitioners use the Peterbuilt dump truck and the flat bed truck to haul scrap and automobiles. No scrap or automobiles involved in this business is stored

on the property. The Peterbuilt dump truck and the flat bed truck, being implements of the business, are stored on the property when not in use.

Mr. Levine further argued that this transportation business, although not what might be considered a tradition home occupation, was an accepted use under Section 3.8.1.2, because it was conducted entirely within the dwelling unit by a resident and employed no persons other than the residents.

All parties present agreed that the bylaw does not specifically define what a home occupation is.

Several abutters stated that they were unaware that any business was being conducted on the property and had no issues the petitioners continuing as they had in the past.

### **Findings**

Two of the Board members, Ken Kozik and Jon Wagner, found that petitioners were operating a storage yard, contractor's yard or other open air establishment for storage, distribution, or sale of materials, merchandise, products or equipment, and/or a salvage yard and open air storage of salvage materials and debris, in violation of Section 3.7.

All three Board members found that the petitioners were operating a non-permitted accessory use under Section 3.8.

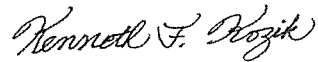
### **Conclusion**

For the reasons stated above, the Board voted **1-2** to OVERTURN the ZEO's determination that the petitioners were in violation of Section 3.7. Marilyn Peterson voted in the affirmative. The ZEO's decision is UPHELD with respect to Section 3.7 of the Bylaw.

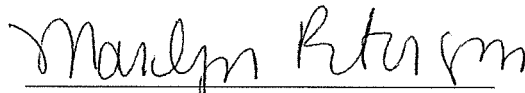
For the reasons stated above, the Board voted **0-3** to OVERTURN the ZEO's determination that petitioners were operating a non-permitted accessory use under Section 3.8. The ZEO's decision is UPHELD with respect to Section 3.8 of the Bylaw.

Any person aggrieved by this decision may appeal pursuant to Massachusetts General Laws Chapter 40A, Section 17 within 20 days after this decision is filed with the Acton Town Clerk.

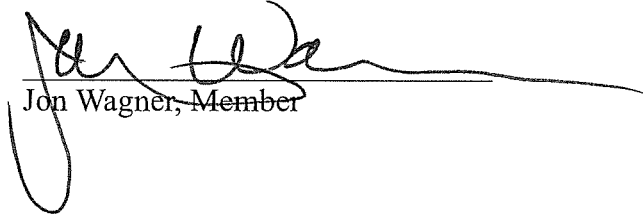
**ACTON BOARD OF APPEALS**



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Kenneth F. Kozik, Chairman



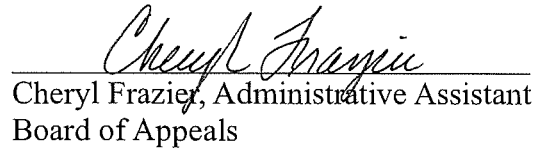
\_\_\_\_\_  
Marilyn Peterson, Member



\_\_\_\_\_  
Jon Wagner, Member

Dated:

I certify that copies of this decision have been filed with the Acton Town Clerk and Planning Board on 7/1, 2011.

  
\_\_\_\_\_  
Cheryl Frazier, Administrative Assistant  
Board of Appeals